

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-3
FAIR HEARING REQUESTS**

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1240-5-3-.01 RIGHT TO APPEAL.

- (1) An applicant or recipient of assistance or services, or his/her authorized representative on his/her behalf, has a right to appeal any action taken by the Department in regard to the assistance or services for which he/she has applied, is receiving, or which has been terminated. Grievances shall be addressed to the Department's interpretations of the law and the validity and applicability of the policies promulgated under the law as they apply to the applicant's or recipient's individual situation. Grievances may also be addressed wherein the sole issue is one of protest of State or Federal laws, policies, or regulations.
- (2) The applicant or recipient or his/her representative shall request a hearing by any clear expression, oral or written.

Authority: TCA §4-5-102. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.

1240-5-3-.02 INFORMATION REGARDING RIGHT TO APPEAL.

- (1) Every applicant or recipient shall be informed at the time of application and at the time of any action affecting his/her claim to assistance or services:
 - (a) of his/her right to a Fair Hearing;
 - (b) of the method by which he/she may obtain a hearing;
 - (c) of his/her right to be represented by an authorized representative, such as legal counsel, relative, or friend. Information and referral services shall be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing.
- (2) A ten (10) day advance notice in writing shall be given to recipients in cases of intended action to discontinue, terminate, suspend, or reduce assistance or services.

Authority: TCA §4-5-301. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.

1240-5-3-.03 TIME LIMIT FOR FILING AN APPEAL. Appeals or requests for a hearing will be accepted only if they are filed within the required time limit unless good cause can be shown as to why the appeal or request for a hearing could not be filed within the required time limit.

(Rule 1240-5-3-.03, continued)

- (1) The following time limits will be allowed for appeals:
 - (a) Vocational Rehabilitation applicants and recipients or individuals acting in their behalf will be allowed ten (10) working days after the date of the Administrative Review finding to appeal any action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation services. Appeals related to the Randolph Sheppard or the Tennessee Business Enterprises Program will be accepted only if they are filed within the time limits specified in rule 1240-6-10-.02.
 - (b) Social Services applicants and recipients or individuals acting in their behalf will be allowed thirty (30) days to appeal any action of the Department in regard to denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness.
 - (c) Aid to Families with Dependent Children, Medical Services, Work Incentive, and Indo-Chinese Refugee program applicants and recipients or individuals acting in their behalf will be allowed ninety (90) days to appeal any action of the Department. Action shall include denial, suspension, reduction or termination of assistance or failure to act upon a request or application with reasonable promptness.
 - (d) A Food Stamp household or their representative shall be allowed to request a hearing on any action by the Department for loss of benefits which occurred in the prior ninety (90) days. Action by the Department shall include a denial of a request for restoration of any Food Stamp benefits lost more than ninety (90) days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.
- (2) In order for the recipient to continue receiving assistance or services pending the appeal, the appeal must be filed within ten (10) days after the mailing date of the written notice of action. If the recipient can show there was good cause for the failure to appeal within ten (10) days, assistance or services may be reinstated or continued pending appeal. Once so continued, the assistance or services will, nevertheless, cease as of the earliest of the following events:
 - (a) A ruling by the hearing officer that the sole issue of the appeal is one of State or Federal law or policy, or change in State or Federal law, and not one of incorrect grant computation; or
 - (b) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or
 - (c) In Food Stamp cases, the certification period ends; or
 - (d) A final decision is made by the agency that the recipient is not entitled to the assistance or services.
- (3) The time limits shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.
- (4) Any waiver of the time limits in this Section are subject to the approval of the Commissioner or his/her designated representative.

Authority: TCA §§4-5-301, 4-5-307, 14-1-105, 14-8-106, 14-14-410, 14-27-105, 49-2805, and 49-2813; 34 CFR 361.48, 45 CFR 205.10, 42 CFR 431.231, and 7 CFR 273.15(k). **Administrative History:** Original rule filed

(Rule 1240-5-3-.03, continued)

January 19, 1977; effective February 18, 1977. Amendment filed July 10, 1980; effective August 25, 1980. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed January 20, 1984; effective February 19, 1984. Amendment filed August 30, 1985; effective November 12, 1985.

1240-5-3-.04 DISMISSAL OF HEARING REQUESTS.

- (1) The Department may dismiss a request for hearing if it has been withdrawn by the applicant or recipient in writing or if it is abandoned. Abandonment may be deemed to have occurred if the applicant or recipient, or the authorized representative, without good cause fails to appear at the scheduled hearing.
- (2) A recipient may request and is entitled to receive a postponement of a scheduled hearing. The postponement shall not exceed thirty (30) days and the time limit per action on the decision may be extended for as many days as the hearing is postponed.
- (3) The Department of Human Services shall offer agency conferences to households which wish to contest a denial of expedited service. The conference shall be scheduled within two working days, unless the households request that it be scheduled later. The agency conferences shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

Authority: TCA §4-5-301. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed April 30, 1979; effective July 30, 1979. Amendment filed December 17, 1982; effective March 16, 1983.

1240-5-3-.05 GROUP HEARINGS. The Department may respond to a group of individual hearing requests by conducting a single group hearing where the sole issue is a State or Federal law or policy or a change in State or Federal law or policy. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his/her own case or be represented by his/her authorized representative.

Authority: TCA §4-5-301. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.